

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MICHAEL AARON DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 07-721-DRH
)	
MICHAEL L. WESPIC,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

HERNDON, Chief District Judge:

Plaintiff, an inmate currently in the Dixon Correctional Center, brings this action for deprivations of his constitutional rights pursuant to 42 U.S.C. § 1983. This case is now before the Court for a preliminary review of the complaint pursuant to 28 U.S.C. § 1915A, which provides:

- (a) **Screening.**– The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.
- (b) **Grounds for Dismissal.**– On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint–
 - (1) is frivolous, malicious, or fails to state a claim on which relief may be granted; or
 - (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A. An action or claim is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Upon careful review of the complaint and any supporting exhibits, the Court finds it appropriate to exercise its authority under § 1915A; this action is legally frivolous and thus subject to summary dismissal.

In this action, Plaintiff explains the events leading up to his current incarceration, essentially

claiming that the complaining witness fabricated her tale of sexual assault. The only defendant named in this action is Michael Wespicek, the state's attorney in Jackson County, Illinois. However, "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983." *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976). Furthermore, if Plaintiff wishes to challenge the validity of his conviction, he may do so through habeas corpus, but only after he has exhausted his legal remedies through the Illinois state courts.

In summary, Plaintiff's complaint does not survive review under § 1915A. Accordingly, this action is **DISMISSED** with prejudice. Plaintiff is advised that the dismissal of this action will count as one of his three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

DATED: January 8, 2008.

/s/ David R Herndon
CHIEF JUDGE
UNITED STATES DISTRICT COURT